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ALEXANDER L. STEVAS,
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NO. 80-1795

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

IN THE MATTER OF 18.86 ACRES OF REAL PROPERTY, NOW KNOWN AS LOT 35, BLOCK 57, SECTION 19, LOCATED IN PITTSGROVE TOWNSHIP, SALEM COUNTY, AND FORMERLY OWNED BY CHARLES NEWELL ATKINSON LEGATEE BY WILL OF PHEBE ATKINSON, DECEASED 1918.

APPEAL FROM THE SUPREME COURT OF NEW JERSEY

MOTION TO DISMISS

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QUESTIONS PRESENTED

1. Whether a New Jersey State Court's decision that an action is barred by the Statute of Limitations presents a substantial Federal Question.

2. Whether the decision of the New Jersey Courts that an action is barred by the doctrine of res judicata rests on an adequate non-federal basis.

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APPEAL FROM THE SUPREME COURT OF THE

STATE OF NEW JERSEY

MOTION TO DISMISS

Appellee, pursuant to Rule 16 (1) (b) of the Rules of the Supreme Court of the United States, moves the court to dismiss the appeal herein on the following grounds:

1. The appeal does not present a substantial federal question.
2. The judgment of the Supreme Court of the State of New Jersey rests on an adequate non-federal basis.

STATEMENT

On October 23, 1978, Appellant herein filed a Complaint and Order to Show Cause in the Superior Court of New Jersey, Chancery Division, seeking to have the judgement rendered in a 1962 In Rem Tax Foreclosure declared null and void.

The trial judge in the Chancery Division held that the action was barred by the doctrine of res judicata.

This decision was based on the fact that Appellant had filed a prior action in the Law Division of the Superior Court of New Jersey on October 16, 1973 based on the exact same facts and seeking essentially the same relief. The trial judge in the Law Division held that the action was barred by the Statute of Limitations. Thereafter, on June 27, 1975 the Judgment entered in the Law Division was affirmed by the Appellate Division of the Superior Court of New Jersey. No further appeals were pursued in the State Courts.

On July 27, 1979, Appellant herein filed a timely Notice of Appeal of the Chancery Division's Decision with the Appellate Division of the Superior Court of New Jersey. The Appellate Division in a per curiam decision on December 2, 1980, upheld the judgment of the Chancery Division substantially on the doctrine of res judicata.

Appellant herein then filed a timely petition for certification with the Supreme Court of New Jersey on February 11, 1981, which petition for certification was denied by the New Jersey Supreme Court.

The Appellant then filed a timely appeal to the Supreme Court of the United States, jurisdiction of which is invoked under 28 U.S.C. § 1257.

ARGUMENT

Appellant's original action filed in the Superior Court, Law Division in 1975 was dismissed on the basis of the running of the Statute of Limitations. As the dismissal of the action on this basis was upheld by the Appellate Division of the Superior Court of New Jersey and no further Appeals were taken by Appellant, the case was as effectively disposed of on the merits under New Jersey law as if the action had been tried to a conclusion.

The later decisions of the Chancery Division of the New Jersey Superior Court in dismissing the action on the basis of res judicata and of the Appellate Division in upholding that decision, and of the New Jersey Supreme Court in refusing to review the lower court's decisions were all founded on the original decision that the action was barred by the applicable New Jersey Statute of Limitations.

Certainly, it is patently obvious that a decision that an action is barred by the applicable State Statute of Limitations is not subject to review by the Supreme Court of the United States, as it presents no substantial federal question. Preston v. Chicago, 226, U.S. 447, 33 S.Ct. 177, 57 L.Ed. 293 (1913)

Similarly, as the present action was dismissed on the basis of the application of the doctrine of res judicata, it is at once apparent from the pleadings submitted by Appellant herein from the procedural history of this action that this decision rests squarely on an independent non-federal basis sufficient to support the State Court's decision.

It has long been held by the United States Supreme Court that an action dismissed on the basis of the application

of the doctrine of res judicata will not be subject to review by the highest court of the land where the state court's decision rests upon independent ground not involving a federal question. Northern Pac. R.Co. v. Ellis 144 U.S. 458 12 S.Ct. 724, 36 L.Ed. 509 (1892)

A review of the decisions of the New Jersey state courts reveals that there was a substantial non-federal basis for upholding the decision to dismiss the within action both on the basis of the running of the Statute of Limitations and especially on the doctrine of res judicata.

CONCLUSION

For the foregoing reasons Appellee moves that this Appeal be dismissed.

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